

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of)	
1991)	
)	
Junk Fax Prevention Act of 2005)	GC Docket No. 05-338

**COMMENTS OF THE INTERNATIONAL PHARMACEUTICAL PRIVACY
CONSORTIUM AND MEDICAL DEVICE PRIVACY CONSORTIUM**

We, the International Pharmaceutical Privacy Consortium (IPPC) and Medical Device Privacy Consortium (MDPC), write to express our support for the Petition for Declaratory Ruling and/or Waiver filed by Merck & Company, Inc. on July 11, 2014. These comments are submitted in response to the Consumer and Governmental Affairs Bureau's request for comments issued on July 25, 2014.

The IPPC and MDPC support the Petition filed by Merck & Company. In the healthcare industry, faxes remain an important and common form of communication. Punishing companies for using this mode of communication, after obtaining a consumer's consent, provides little benefit to consumers while imposing large liabilities on business. Given the vagueness of the requirements of 47 CFR 64.1200(a)(4)(iv), it is reasonable to interpret these provisions as permitting faxed advertisements to be sent to consumers without lengthy opt-out notices when those same consumers had previously given consent to receive such advertisements.

The FCC should interpret its regulations to apply only to those faxes which are truly "unsolicited," and where a consumer's consent to receive the fax was entirely lacking. In scenarios like the one described in Merck's Petition, there is no harm to members of the public

from receiving a fax they had previously consented to receive, containing an effective opt-out mechanism. As Merck notes in the Petition, Congress was undoubtedly aware of the negligible impact on consumers from consented-to communications, which is why the TCPA is directed at advertisements transmitted without the recipient's "prior express invitation or permission." The FCC should avoid burdening companies who have obtained a consumer's consent to receive advertisements with liabilities not intended by Congress.

In any event, even if the FCC is determined to apply its regulations to faxed advertisements sent on the basis of a consumer's consent, it should acknowledge the significant uncertainty created by the form of 47 CFR 64.1200(a)(4). As Merck notes in its petition, that provision has not been written in manner that lends itself to clarity or ready interpretation. The whole of 47 CFR 64.1200(a)(4) is limited in the first line to those advertisements which are "unsolicited." It begins by flatly prohibiting such advertisements "unless" those advertisements qualify for the exceptions listed in the ensuing subsections. This language of permission is then interrupted by an additional limitation purporting to apply to a category of communications that has already fallen outside of the initial limitation contained in (a)(4). In light of this inconsistency, the FCC should strongly consider Merck's petition for a waiver, even if it applies the provisions contained in 47 CFR 64.1200(a)(4) to communications that were consented to by a consumer prior to their receipt.

We thank the FCC for the opportunity to comment.

Respectfully submitted,

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